to section 4371(2)); and reinsurance (subject to section 4371(3)).

All premiums paid with respect to each of these three categories may be treated as a single payment or income item within the category. For reports first due before May 1, 1991, the report may disclose, for each of the three categories, the total amount of premiums derived by the foreign insurer or reinsurer in U.S. dollars (even if a portion of these premiums relate to risks that are not U.S. situs). Reasonable estimates of the amounts required to be disclosed will satisfy these reporting requirements.

(e) *Effective date.*

* * * * *

* * * Foreign insurers and reinsurers subject to reporting described in paragraph (c)(7)(ii) of this section must so report for calendar years 1988 and 1989 no later than August 15, 1990.

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.

Approved: June 14, 1990.

Kenneth W. Gideon,
Assistant Secretary of the Treasury.

[FR Doc. 90-16182 Filed 7-11-90; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Attorney General Order No. 1427-90]

Hate Crime Statistics Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule will codify in the Code of Federal Regulations the formal delegation to the Federal Bureau of Investigation of the authority to enforce the Hate Crime Statistics Act. The FBI has been chosen to perform this function because of its expertise in compiling criminal statistics. The delegation is being codified to ensure public accountability. Codification will provide a permanent guide to the public on where in the Department to report information on hate crimes or seek statistics and guidance.

EFFECTIVE DATE: This rule is effective July 3, 1990.

FOR FURTHER INFORMATION CONTACT: For further information, contact Harper Wilson, FBI (202) 324-2614.

SUPPLEMENTARY INFORMATION: The recently enacted Hate Crime Statistics Act authorizes the Department of Justice to monitor the number of hate crimes that occur in the United States. In order to do so efficiently, the Attorney General has authorized the FBI to act as the central repository of such data and carry out the Department's functions under the Act. This rule will amend the Code of Federal Regulations in order to provide a public record of this delegation.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant economic impact on a substantial number of small entities. This is not a major rule as defined in section 1(b) of EO 12991, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with EO 12612.

List of Subjects in 28 CFR Part 0

Administrative practice and procedure, Authority delegation.

Therefore, by virtue of the authority vested in me, including 28 U.S.C. 509, 510, and the Hate Crime Statistics Act, *to be codified at* 28 U.S.C. 534 *note*, part 0 of title 28 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301, 2303, 3101; 8 U.S.C. 1103, 1324A, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 3521, 3621, 3622, 4001, 4041, 4042, 4044, 4082, 4201 *et seq.*, 6003(b); 21 U.S.C. 871, 873, 881(d), 904; 22 U.S.C. 263a, 1621-1645o, 1622 note; 28 U.S.C. 509, 510, 515, 516, 519, 524, 543, 552, 552a, 569; 31 U.S.C. 1108, 3801 *et seq.*; 50 U.S.C. App. 1989b, 2001-2017p; Pub. L. No. 91-513, sec. 501; EO 11919; EO 11267; EO 11300.

2. Section 0.85 is amended by adding a new paragraph (m) to read as follows:

§ 0.85 General functions.

* * * * *

(m) Carry out the Department's responsibilities under the Hate Crime Statistics Act.

Dated: July 3, 1990.

Dick Thornburgh,
Attorney General.

[FR Doc. 90-16267 Filed 7-11-90; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

California State Plan

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; level of federal enforcement.

SUMMARY: This notice announces the Occupational Safety and Health Administration's (OSHA) determination that the State occupational safety and health program approved under section 18 of the Occupational Safety and Health Act for the State of California has once again developed sufficiently to justify suspension of most concurrent Federal enforcement activity. On October 5, 1989, OSHA entered into an agreement with California whereby concurrent Federal enforcement authority would not be initiated with regard to most Federal occupational safety and health standards in issues covered by the State's plan. Among other areas as discussed in this notice, the agreement provides that Federal OSHA will continue to be responsible for enforcement in occupational safety and health issues not covered by the State plan and for Federal standards not yet promulgated by the State, and may reassume jurisdiction in other limited circumstances where the State is unable to fulfill its enforcement obligations. OSHA is hereby amending 29 CFR 1952.172 to reflect this level of enforcement authority.

EFFECTIVE DATE: October 5, 1989.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, room N-3637, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523-8184.

SUPPLEMENTARY INFORMATION:

Background

Part 1954 of title 29, Code of Federal Regulations, sets out procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter referred to as the Act) for the evaluation and monitoring of State plans which have been approved under section 18(c) of the Act and 29 CFR part 1902. After initial approval, but prior to final approval, section 18(e) of the Act provides for a period of concurrent jurisdiction. Section 1954.3 of this chapter provides guidelines and procedures for the exercise of discretionary concurrent Federal enforcement authority during the period with regard to Federal standards in issues covered under an approved State plan. In determining the appropriate level of Federal enforcement, OSHA must consider the effectiveness of State enforcement, the coordinated utilization of Federal and State resources throughout the Nation, and current worker protection needs in the State. If Federal monitoring shows that a State program has developed its program to a degree sufficient to justify suspension of duplicative Federal enforcement activity, U.S. Department of Labor regulations provide that OSHA, through its Regional Administrator, may enter into a procedural agreement with the State, usually referred to as an "operational status agreement," setting forth areas of Federal and State enforcement responsibility (29 CFR 1954.3(f)). Any finding of operational status, and any procedural agreement based upon such a finding must be approved by the Assistant Secretary. A State is determined to be operational under § 1954.3(b) of this chapter when it has enacted enabling legislation, promulgated State standards, achieved an adequate level of qualified personnel, and established a system of review of contested enforcement actions.

In general, operational status agreements provide that concurrent Federal enforcement authority will not be exercised as to safety and health issues covered by the plan. Federal OSHA retains responsibility for enforcement in occupational safety and health issues not covered by the State plan and for new Federal standards not yet promulgated by the State, and may reassume jurisdiction to assist the State in fulfilling its enforcement obligations under certain limited conditions. These agreements are a procedural allocation of enforcement responsibilities that do not divest OSHA of its Federal concurrent jurisdiction as a matter of statutory law. Statutory authority for concurrent Federal jurisdiction is terminated only after an affirmative determination under section 18(e) of the Act (final approval).

California State Plan

The California State occupational safety and health plan initially was approved by the Occupational Safety and Health Administration (OSHA) under section 18(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667(c)) (hereinafter referred to as the Act) and 29 CFR part 1902 on April 24, 1973. On May 1, 1973, a notice was published in the **Federal Register** announcing the approval and adding subpart K describing the plan to 29 CFR part 1952. The approved plan provided coverage to all private sector and State and local government employees except some limited maritime employment, domestic household service, and employees of private contractors on Federal installations where the Federal agency claimed exclusive Federal jurisdiction and refused entry to the State.

On January 13, 1976, notice of California's original Operational Status Agreement was published in the **Federal Register** (41 FR 1904). The agreement suspended Federal enforcement authority in specific areas and set forth the scope of the exercise of Federal authority under section 18(e) of the Act in the State of California with respect to occupational safety and health standards promulgated under section 6 of the Act. It specified the conditions the State had met to become eligible for operational status such as providing standards promulgated under State law which are the same as Federal standards or at least as effective as Federal standards, enacting enabling legislation, providing a sufficient number of qualified personnel, and having a review and appeals system in operation in the State. The agreement also delineated continuing Federal responsibilities in the State in such areas as Federal government employment, private contractors on certain Federal installations, response to complaints filed with the Occupational Safety and Health Administration alleging discrimination under section 11(c) of the Act, certain maritime activities, enforcement of Federal permanent and temporary emergency standards until such time as the State shall have adopted equivalent standards, and employers manufacturing explosives under contract to the U.S. Department of Defense. An amendment to the 1976 Agreement was signed on April 30, 1979, which allowed Federal OSHA to further exercise concurrent Federal enforcement authority under specific conditions when necessary to provide worker protection.

On February 6, 1987, Governor George Deukmejian, in a letter to then Secretary of Labor William E. Brock, notified the U.S. Department of Labor of his intention to discontinue State funding for California's occupational safety and health program in the proviate sector and voluntarily withdraw the California State plan pursuant to 29 CFR 1955.3, effective June 30, 1987. (29 CFR 1955.3 provides that a State may at any time withdraw its plan by notifying the Assistant Secretary in writing setting forth the reasons for such withdrawal.) The Governor's letter stated that California would continue to cover public sector employees.

On February 23, 1987, Secretary Brock responded to Governor Deukmejian's letter stating that OSHA would take all the necessary steps possible to ensure worker protection by Federal OSHA in the State of California. Consequently, on June 10, 1987, a notice was published in the **Federal Register** (52 FR 21952) in which OSHA announced that it would resume the exercise of concurrent Federal safety and health authority in California as of July 1. Subsequently, noting the existence of various court challenges to the Governor's February 6 letter of intent as well as the ongoing budgetary process in the State legislature, OSHA took no action to officially terminate the State plan, although Cal/OSHA ceased private sector enforcement operations on July 1, 1987.

The June 10, 1987, notice announced that, under the terms of the April 1979 Operational Status Agreement, Federal OSHA would resume the exercise of its enforcement authority in private sector workplaces in California. On July 1, 1987, Federal OSHA began conducting inspections of private sector workplaces in the State, including inspections in response to employee complaints of hazardous working conditions, and issued citations and proposed penalties for violations of Federal standards and regulations as appropriate. Contests to such citations were heard by the Federal Occupational Safety and Health Review Commission. Federal authority continued to be exercised with regard to complaints alleging discrimination against private sector employees because of the exercise of any right afforded to the employee by the Act. Federal jurisdiction also remained in effect with respect to Federal government employees.

The State continued to regulate safety and health conditions in State and local government employment. The State also provided consultation services to employers, as California had indicated its intention to continue to provide such services to private sector employers under an existing separate agreement with OSHA under section 7(c)(1) of the Act. All complaints from private sector employees of hazardous working conditions or discrimination for exercising rights under the Act and all other inquiries with regard to occupational safety and health enforcement in the private sector after July 1, 1987, were directed by Cal/OSHA to the Federal OSHA Regional Office in San Francisco.

During this time and through October of 1988, a petition drive was underway for an initiative to restore the State's program, to be included on the November 8, 1988 California State ballot. In November 1988, California voters passed Proposition 97, which added a section to the State Labor Code mandating California's implementation of a full State plan. On November 29, Governor Deukmejian wrote to then U.S. Secretary of Labor Ann McLaughlin indicating the State's intention to reestablish its full State plan. On December 19, Secretary McLaughlin acknowledged the Governor's letter and promised cooperation in the transition back to State enforcement.

To this end, on March 30, 1989, a Memorandum of Understanding (MOU) (subsequently amended on July 12, 1989) was signed by the State of California and Federal OSHA to facilitate the exercise of concurrent enforcement authority during the phased restoration of the State plan, with the goal of the suspension of Federal enforcement activity in the State and California's resumption of enforcement responsibility to be effective by October 1, 1989. Under the terms of the MOU, on May 1 Federal OSHA began to phaseout the exercise of its concurrent jurisdiction and the State began to resume enforcement of job safety and health rules in the private sector (i.e., investigating complaints and accidents, administering various permit, licensing, registration and notification requirements of private sector employers, conducting programmed inspections in specific industries). Federal OSHA continued to be responsible for regularly scheduled inspection activities, targeting specific hazardous industries and operations. In addition, Federal OSHA continued to enforce specific Federal standards which had not yet been adopted by Cal/OSHA or which provided a significantly greater level of worker protection than the corresponding Cal/OSHA standards.

On October 5, 1989, a new Operational Status Agreement was signed between the State of California and Federal OSHA in which the California Division of Occupational Safety and Health (Cal/OSHA) resumed full enforcement of job safety and health rules in both the private and public (State and local) sectors in the State, and Federal OSHA voluntarily suspended most enforcement activity. This agreement replaces that previously entered into between Federal OSHA and the State of California and ends shared enforcement responsibility with Federal OSHA as described in the March 30, 1989, Memorandum of Understanding as revised on July 12, 1989. The new Operational Status Agreement sets forth the scope of the exercise of Federal authority under section 18(e) of the Act in the State of California with respect to occupational safety and health standards promulgated under section 6 of the Act, by specifying areas of State responsibility, and delineating continuing Federal responsibilities in the State.

California was determined to have achieved operational status by:

a. Enactment of State enabling legislation which provides the necessary legal framework to bring State plan into conformity with the Act and 29 CFR part 1902. See sections 6300 through 6708 (Occupational Safety and Health) and 50 through 175 (Department of Industrial Relations) of the California State Labor Code, as amended by the passage of Proposition 97 in November 1989 (Labor Code sections 50.7 and 6303.5).

b. Promulgation of State standards comparable to (but often significantly different from) Federal standards in issues covered by the State plan, with the exception of some such as, Toxic and Hazardous Substances (Air Contaminants, 29 CFR 1910.1000), General Environmental Controls in Agriculture (Field Sanitation, 29 CFR 1928.110), and Hazardous Materials (Hazardous Waste Operations and Emergency Response, 29 CFR 1910.120), which were promulgated by Federal OSHA during and subsequent to the period when Cal/OSHA's private sector activity was suspended.

c. Employment of a sufficient number of qualified personnel necessary for the enforcement of State standards (as of March 1, 1990, California had 119 Safety and 64 Health Compliance Officers conducting inspections).

d. Provision for administrative and/or judicial review of State citations and penalties by the California Occupational Safety and Health Appeals Board which resumed full operation on May 1, 1989.

In addition, the State has provided under its plan for:

a. Notification to employers and employees of their rights and responsibilities under the State plan through the development and required display of a State poster;

b. Occupational accident and illness recordkeeping and reporting by employers covered under the plan;

c. Response to complaints alleging job safety and health violations, and to complaints alleging discrimination under the State Act; and

d. Adequate protection of employer and employee rights.

Accordingly, notice is hereby given that the concurrent Federal enforcement authority will not be exercised with respect to issues covered under the State plan with the exception of: permanent and emergency temporary standards which the State has not adopted or amended in conformance with Federal standards actions and review findings (e.g., Toxic and Hazardous Substances (Air Contaminants, 29 CFR 1910.1000), General Environmental Controls in Agriculture (Field Sanitation, 29 CFR 1928.110), Hazardous Materials (Hazardous Waste Operations and Emergency Response, 29 CFR 1910.120)). In addition, OSHA retains authority for: Federal government employment; all enforcement activity regarding private contractors on Federal installations where the Federal agency has claimed exclusive Federal jurisdiction, challenged State jurisdiction and/or refused entry; response to complaints filed with the Occupational Safety and Health Administration alleging discrimination under section 11(c) of the Act; certain specifically defined private-sector maritime activities as to which OSHA will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current and future, which are applicable to such employment. Federal OSHA also may reassume jurisdiction to assist the State in fulfilling its enforcement obligations under certain limited conditions.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

The purpose of the present rule is to amend subpart K—California, in 29 CFR part 1952, to give notice of the signing of an operational status agreement between Federal OSHA and California limiting the exercise of concurrent Federal enforcement activity. This agreement became effective on October 5, 1989, upon signature by the parties, and further public participation would be unnecessary.

PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

In accordance with the terms of the operational status agreement, title 29, part 1952 is hereby amended as set forth below:

1. The authority citation for part 1952 continues to read as follows:

Authority: Secs. 8, 18, Occupational Safety and Health Act of 1970 (29 U.S.C. 657, 667); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059) or 9–83 (48 FR 35736).

2. Section 1952.172 of part 1952, subpart K—California, is revised to read as follows:

§ 1952.172 Level of federal enforcement.

(a) Pursuant to §§ 1902.20(b)(1)(iii) and 1952.3 of this chapter, under which a revised agreement has been entered into between Frank Strasheim, OSHA Regional Administrator, and Ron Rinaldi, Director, California Department of Industrial Relations, effective October 5, 1989, and based on a determination that California is operational in the issues covered by the California occupational safety and health plan, discretionary Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) will not be initiated with regard to Federal occupational safety and health standards in issues covered under 29 CFR part 1910, 29 CFR part 1926, and 29 CFR part 1928, except as set forth below.

(b) The U.S. Department of Labor will continue to exercise authority, among other things, with regard to:

(1) Specific Federal standards which the State has not yet adopted or with respect to which the State has not amended its existing State standards when the Federal standard provides a significantly greater level of worker protection than the corresponding Cal/OSHA standard, enforcement of new permanent and temporary emergency Federal standards until such time as the State shall have adopted equivalent standards, and enforcement of unique and complex standards as determined by the Assistant Secretary.

(2) The following maritime activities:

(i) Longshore operations on vessels from the shore side of the means of access to said vehicles.

(ii) Marine vessels construction operations (from the means of access of the shore).

(iii) All afloat marine ship building and repair from the foot of the gangway.

(iv) All ship building and repair in graving docks or dry docks.

(v) All ship repairing done in marine railways or similar conveyances used to haul vessels out of the water.

(vi) All floating fuel operations.

(vii) All afloat dredging and pile driving and similar operations.

(viii) All diving from vessels afloat on the navigable waters.

(ix) All off-shore drilling rigs operating outside the 3-mile limit.

(3) Any hazard, industry, geographical area, operation or facility over which the State is unable to exercise jurisdiction fully or effectively.

(4) Private contractors on Federal installations where the Federal agency claims exclusive Federal jurisdiction, challenges State jurisdiction and/or refuses entry to the State; such Federal enforcement will continue at least until the jurisdictional question is resolved at the National level between OSHA and the cognizant Federal agency.

(5) Complaints filed with Federal OSHA alleging discrimination under section 11(c) of the OSH Act.

(6) Completion of Federal enforcement actions initiated prior to the effective date of the agreement.

(7) Situations where the State is refused entry and is unable to obtain a warrant or enforce the right of entry.

(8) Enforcement in situations where the State temporarily is unable to exercise its enforcement authority fully or effectively.

(c) As required by section 18(f) of the Act, OSHA will continue to monitor the operations of the California State program to assure that the provisions of the State plan are substantially complied with and that the program remains at least as effective as the Federal program. The Regional Administrator for Occupational Safety and Health will make a prompt recommendation for the resumption of the exercise of Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) whenever, and to the degree, necessary to assure occupational safety and health protection to employees in California.

Signed at Washington, DC.

Gerard F. Scannell,

Assistant Secretary.

[FR Doc. 90-16245 Filed 7-11-90; 8:45 am]

BILLING CODE 4510-23-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 540

Nicaraguan Trade Control Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule, amendments.

SUMMARY: This final rule amends the Nicaraguan Trade Control Regulations, 31 CFR part 540 (the "Regulations"), to implement Executive Order 12707 of March 13, 1990 (55 FR 9707), which lifted United States sanctions against Nicaragua. That Executive Order revoked Executive Order 12513 of May 1, 1985, and terminated the national emergency declared therein with respect to Nicaragua. Executive Order 12707 and this rule clarify that sanctions against Nicaragua were lifted as of March 13, 1990, but that the Treasury Department's enforcement authority with respect to acts committed during the period of the emergency remains in full effect.

EFFECTIVE DATE: 9:10 a.m. Eastern Standard Time, March 13, 1990.

FOR FURTHER INFORMATION CONTACT: William B. Hoffman, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: (202) 376-0408.

SUPPLEMENTARY INFORMATION: Executive Order 12707 of March 13, 1990, terminated the national emergency declared with respect to Nicaragua, and revoked Executive Order 12513 of May 1, 1985. Executive Order 12513 imposed four measures to deal with the national emergency: a prohibition on imports of Nicaraguan-origin goods and services; a prohibition on exports from the United States of goods to Nicaragua; a ban on Nicaraguan air carriers engaging in air transportation to or from points in the United States; and a ban on vessels of Nicaraguan registry entering into U.S. ports. Implementation of these prohibitions was delegated to the Treasury Department, which promulgated the Regulations to that end.

Consistent with Executive Order 12707, the Office of Foreign Assets Control is amending the Regulations to reflect their inapplicability to transactions occurring after 9:10 a.m. e.s.t., March 13, 1990. This amendment does not affect investigations pending as of the effective date, or rights or duties that matured or penalties that were incurred prior to the effective date.

Since the Regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply. Because the Regulations are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981, dealing with Federal regulations.

List of Subjects in 31 CFR Part 540

Administrative practice and procedure, Foreign trade, Nicaragua, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 31 CFR part 540 is amended as follows:

Section 540.599 is added to subpart E, as follows:

§ 540.599 Lifting of sanctions.

(a) The prohibitions contained in §§ 540.204 through 540.209 of this part do not apply to any transaction occurring after 9:10 a.m. e.s.t., March 13, 1990.

(b) Nothing in this section affects any action taken or proceeding pending and not finally concluded or determined at, or any action or proceeding based on any act committed prior to, or any rights or duties that matured or penalties that were incurred prior to 9:10 a.m. e.s.t., March 13, 1990.

Dated: June 11, 1990.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: June 22, 1990.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 90-16249 Filed 7-9-90; 12:36 pm]

BILLING CODE 4810-25-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 286h

[DoD Directive 5200.xx]

Release of Acquisition Related Information

AGENCY: Office of the Secretary, DOD.

ACTION: Interim rule.

SUMMARY: This interim rule establishes the policy of the Department of Defense to make the maximum amount of acquisition-related information available to the public and to respond promptly to specific requests from the public.

DATES: Effective July 12, 1990. Written comments on this interim rule must be received by August 13, 1990.

ADDRESSES: Forward comments to the Office of the Deputy Assistant Secretary of Defense for Procurement, Contract Policy and Administration, The Pentagon, room 3C838, Washington, DC 20301-8000.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Slavsky, telephone (202) 697-8335.

SUPPLEMENTARY INFORMATION: Events experienced over the last few years indicate a need for the Department of Defense to issue a uniform policy on the "release of acquisition-related information." This need was also highlighted during a hearing before the Senate Subcommittee on Oversight of Government Management, Committee on Governmental Affairs, on February 24, 1989. In addition section 822 of Public Law 101-189, National Defense Authorization Act, 1990, requires the Department of Defense to prescribe a single uniform regulation for dissemination of, and access to, acquisition information. The final rule will be published in title 32 of the Code of Federal Regulations and incorporated as an appendix to the Defense Federal Acquisition Regulation Supplement.

List of Subjects in 32 CFR Part 286h

Freedom of information, Government procurement.

Accordingly, title 32, subchapter P, is proposed to be amended to add part 286h to read as follows:

PART 286H—RELEASE OF ACQUISITION-RELATED INFORMATION

Authority: Public Law 101-189.

§ 286h.1 Purpose.

This part sets forth Department of Defense (DoD) policy for the release of acquisition-related information.

§ 286h.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman, Joint Chiefs of Staff and Joint Staff (CJCS), the Unified and Specified Commands, and the Defense Agencies (hereafter referred to collectively as "DoD Components").

(b) This part is issued pursuant to section 822 of Public Law 101-189, which requires the Department of Defense to prescribe a single uniform regulation for dissemination of, and access to, acquisition information.

§ 286h.3 Policy.

(a) *General.* It is the Department of Defense's policy to make the maximum amount of acquisition-related information available to the public, and to respond promptly to specific requests from the public for such information, except for the information identified in paragraph (b) of this section, for which release is restricted.

(b) *Information for Which Release is Restricted.* The information identified below may be released only as set forth herein.

(1) *Release Subject to Statutory Restrictions.* This information may be released only in accordance with the applicable statutory requirements. Once the statutory requirements have been satisfied, the information may be released unless it falls within one of the categories described in the following paragraphs, in which case the policies governing release of information within those categories shall be followed.

(2) *Classified Information.* (i) Any information or material, regardless of its physical form or characteristics, that is owned by, produced by or for, or under the control of the United States Government, and which, for national security purposes, must be protected against unauthorized disclosure and is so designated or marked with the appropriate classification.

(ii) Release, access, and dissemination of classified information shall be made through existing security channels in accordance with DoD 5220.22-R;[1] DoD 5220.22-M;[2] and DoD 5200.1-R,[3] which are implementing publications for safeguarding classified information release, access, and dissemination to United States and foreign concerns.

(3) *Contractor Bid or Proposal Information.* (i) This is information prepared by or on behalf of an offeror and submitted to the Government as a part of or in support of the offeror's bid or proposal to enter into a contract with the Government, the disclosure of which would place the offeror at a competitive disadvantage or jeopardize the integrity or the successful completion of the procurement. Contractor bid or proposal information includes cost or pricing data, profit data, overhead and direct labor rates, and manufacturing processes and techniques. Contractor bid or proposal information does not include information that is available to the public.

(ii) (A) *Sealed Bids.* (*1*) Prior to bid opening, no release or disclosure of contractor bid information shall be made to anyone other than those who are involved in the evaluation of the bids or to other individuals authorized by the Head of the DoD Component, or his or her designee.

(*2*) After contract award, contractor bid information may be released or disclosed by those authorized by the Head of the DoD Component, or his or her designee, to make such release or disclosure, if the information to be released or disclosed is not subject to a restrictive legend authorized by Federal Acquisition Regulation (FAR) 52.215-12 or release is not otherwise restricted by law.

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[1] Copies may be obtained, at cost, from the National Technical Information Services, 5285 Port Royal Road, Springfield, VA 22161.

[2] Copies may be obtained, at cost, from the Government Printing Office, ATTN: Superintendent of Documents, Washington, DC 20402.

[3] See footnote 1 to § 286h.3(b)(2)(ii).

(*3*) *Negotiated Procurements.* Prior to contract award, no release or disclosure of contractor proposal information shall be made to anyone other than those who are involved in the evaluation of the proposals or the source selection or to other individuals authorized by the Head of the DoD Component, or his or her designee. DoD Components shall adopt procedures in accordance with FAR 15.413 to protect against release or disclosure of contractor proposal information. After contract award, contractor proposal information may be released or disclosed by those authorized by the Head of the DoD Component, or his or her designee, to make such release or disclosure, if the information to be released or disclosed is not subject to a restrictive legend authorized by FAR 15.509 or FAR 52.215-12 or release is not otherwise restricted by law.

(4) *Source Selection Information.* (i) This is information prepared or developed for use by the Government in connection with the selection of a bid or proposal for the award of a contract. Only the following information, including copies or extracts thereof, is source selection information:

(A) Bid prices submitted in response to a Government solicitation for sealed bids or lists of such bid prices (applicable prior to bid opening only);

(B) Proposed costs or prices submitted in response to a Government solicitation prior to award of the contract, a list of proposed costs or prices;

(C) Source selection plans;

(D) Technical evaluation plans;

(E) Technical evaluations of competing proposals;

(F) Cost or price evaluations of competing proposals;

(G) Competitive range determinations;

(H) Rankings of competitors;

(I) The reports and evaluations or source selection boards, advisory councils, or the source selection authority (SSA); and

(J) Any other information which:

(*1*) If disclosed, would give an offeror a competitive advantage or jeopardize the integrity or successful completion of the procurement; and

(*2*) Is marked with the legend "Source Selection Information."

(ii) *Release of or Access to Source Selection Information (SSI)—(A) Access to SSI.* The SSA (including the contracting officer when the contracting officer is the SSA) shall restrict access to source selection information to only those Government employees directly involved in the source selection process or to those individuals who have been authorized by the Head of the DoD Component, or his or her designee, to have access to such information. If the contracting officer or the SSA have not been appointed, the Head of the DoD Component, or his or her designee, shall assure access to such information is properly restricted. Employees supervising or managing employees directly involved in the source selection process are not themselves by virtue of their positions directly involved in the source selection process.

(B) *Release of SSI.—(1) Prior to Contract Award.* Source selection information shall not be released prior to contract award unless the Head of the DoD Component, or his or her designee, determines that release is in the public interest and would not jeopardize the integrity or successful completion of the procurement. The information to be released shall only be released by the contracting officer. The contracting officer shall make release in a manner that does not provide any potential offeror with a competitive advantage.

(*2*) *After Contract Award.* The need to protect source selection information generally ends with contract award. The contracting officer may release, or authorize the release of, any source selection information related to that contract award except: Source selection information specifically developed or prepared for use with more than one solicitation when there is a continuing need to protect that information; unless otherwise permitted by law, source selection information containing contractor data or extracts thereof which are protected by law; information which would reveal the relative merits or technical standing of the competitors or the evaluation scoring; and any pre-decisional or other information not subject to release under the Freedom of Information Act. Debriefings to unsuccessful offerors shall be conducted in accordance with FAR 15.1003 and Defense Federal Acquisition Regulation Supplement (DFARS) 215.1003(a).

(5) *Planning, Programming, and Budgetary Information.* (i) Planning, Programming, and Budgeting System (PPBS) documents and supporting data bases are not to be disclosed outside the Department of Defense (DoD) and other governmental agencies directly involved in the defense planning and resource allocation process (e.g., the Office of Management and Budget). PPBS papers and associated data set forth the details of proposed programs and plans. Access to this material by those not directly involved in the PPBS process undermines the confidentiality necessary for the Secretary and Deputy Secretary to obtain candid advice on the content of the defense program. Also, access to PPBS information by private firms seeking contracts with the Department may pose ethical, even criminal, problems for those involved and reduce effective competition in the contract awards process.

(ii)(A) Requests for exceptions to this limitation may be granted on a case-by-case basis to meet compelling needs, after coordination with the Office of General Counsel, by the Head of the OSD office responsible for the PPBS phase to which the document or data base pertains; the Under Secretary of Defense (Policy) for the planning phase; the Assistant Secretary of Defense (Program Analysis and Evaluation) for programming; and the Comptroller, DoD for budgeting. A list of the current major documents and data bases for each PPBS phase is in paragraph (B)(5)(11)(C) of this section; all other PPBS materials are also controlled under this policy.

(B) Disclosure of PPBS information to Congress and the General Accounting Office (GAO) is covered by statute and other procedures.

(C) Major PPBS Documents and Data Bases by Phase.

Planning Phase

(*1*) Defense Planning Guidance.

Programming Phase

(*2*) Fiscal Guidance (when separate from Defense Planning Guidance);

(*3*) Program Objective Memoranda (POM);

(*4*) POM Defense Program (formerly FYDP) documents (POM Defense Program, Procurement Annex, RDT&E Annex);

(*5*) Program Review Proposals;

(*6*) Issue Papers (aka, Major Issue Papers, Tier II Issue Papers, Cover Briefs);

(*7*) Proposed Military Department Program Reductions (or Program Offsets);

(*8*) Tentative Issue Decision Memoranda;

(*9*) Program Decision Memoranda;

Budgeting Phase

(*10*) Defense Program (formerly FYDP) documents for September and President's Budget Estimate submissions including Defense Program Procurement, RDT&E and Construction Annexes;

(*11*) Classified P-1, R-1 and C-1;

(*12*) Program Budget Decisions/ Defense Management Review Decisions;

(*13*) Reports Generated by the Automated Budget Review System (BRS);

(*14*) DD Form 1414 Base for Programming;

(*15*) DD Form 1416 Report of Programs;

(*16*) Contract Award Reports;
(*17*) Congressional Data Sheets.
(ii) Contractor requests for information contained in the National Military Strategy Document (including annexes) and the Chairman's Program Assessment Document (including annexes and comments) shall be forwarded to the CJCS who shall determine on a case-by-case basis what information, if any, is releasable to the contractor.

(6) Documents That Disclose the Government's Negotiating Position. Documents that would disclose the government's negotiating position (such as pre-negotiation business clearances and positions and government cost estimates) or would adversely impact the government negotiating strategy shall not be released.

(7) Drafts and Working Papers. Drafts and working papers that would otherwise be releasable under paragraph 286h.3(a) shall not be released where their release would inhibit the development of agency positions, jeopardize the free exchange of information that is part of the deliberative process, or compromise the decision-making process.

(c) *Freedom of Information Act.* Where a request for information, the release of which is restricted under paragraph 286h.3(b) is made under the Freedom of Information Act, the request shall be forwarded to the appropriate official for disposition in accordance with DoD 5400.7–R.[4] Requests for contractor bid or proposal information pursuant to the Freedom of Information Act shall be subject to subparagraph 5–207 a. of DoD 5400.7–R, which requires notice to a non-United States Government source of a record.

§ 286h.4 Responsibilities.

(a) The Under Secretary of Defense (Acquisition) shall be responsible for establishing uniform policies and procedures for the release of acquisition-related information.

(b) The Under Secretary of Defense (Policy), Assistant Secretary of Defense (Program Analysis and Evaluation) and Comptroller, DoD are responsible for adjudicating requests for access to Planning, Programming and Budgeting information pertaining to their respective phases of the PPB system.

(c) The Head of each DoD Component shall assure that procedures for the release of acquisition-related information are consistent with the policy contained in this Directive and shall not impose any additional restrictions on release of such information. These procedures shall specifically identify the individuals authorized to release and transmit acquisition-related information.

Dated: July 9, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–16315 Filed 7–11–90; 8:45 am]

BILLING CODE 3810-01-M

[4] See footnote 1 to § 286h.3(b)(2)(ii).

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[OGD 05–90–36]

Special Local Regulations for Marine Events; Barnegat Bay Classic; Toms River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice implements 33 CFR 100.502 for the Barnegat Bay Classic, an annual event to be held on August 25, 1990 in Barnegat Bay, between Island Beach and the mainland. These special local regulations are needed to provide for the safety of the participants and spectators on navigable waters during this event. The effect will be to restrict general navigation in the regulated area.

EFFECTIVE DATES: The regulations in 33 CFR 100.502 are effective from 9 a.m. to 5 p.m., August 25, 1990. In case of inclement weather causing the event to be postponed, the regulation will be effective from 9 a.m. to 5 p.m., August 26, 1990.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer. Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Captain Michael K. Cain, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Barnegat Bay Powerboat Racing Association, Toms River, New Jersey, submitted an application on May 15, 1990 to hold the Barnegat Bay Classic in Barnegat Bay between Island Beach and the mainland. The event will consist of approximately 50–60 powerboats, ranging from 20 to 36 feet in length, racing on a designated course within the regulated area. Because this event is of the type contemplated by these regulations, the safety of the participants will be enhanced by the implementation of the special local regulations. Waterborne traffic should not be severely disrupted at any given time, because closure of the Intracoastal Waterway is not anticipated. These regulations are implemented by publication of this notice in the Federal Register and in the Fifth District Local Notice to Marines.

Dated: July 3, 1990.

P. A. Welling,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 90–16242 Filed 7–11–90; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD 05–90–37]

Special Local Regulations for Marine Events; Cambridge Classic Powerboat Regatta; Hambrooks Bay, Choptank River, Cambridge, MD

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are adopted for the Cambridge Classic Powerboat Regatta to be held in Hambrooks Bay, Choptank River, Cambridge, Maryland, July 28 and 29, 1990. These regulations will govern vessel activity during the actual races. The regulations are necessary due to the potential danger to waterway users, the confined nature of the waterway, and expected spectator craft congestion during the event.

EFFECTIVE DATES: The regulations are effective for the following period:

9 a.m. to 6 p.m., July 28, 1990.
9 a.m. to 6 p.m., July 29, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen L. Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective less than 30 days from the date of **Federal Register** publication. Adherence to normal rulemaking procedures would not have been possible. Specifically, the sponsor's application to hold the event